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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,880	03/31/2004	Anat Shiloach	J6893(C)	8453

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UNILEVER INTELLECTUAL PROPERTY GROUP
700 SYLVAN AVENUE,
BLDG C2 SOUTH
ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER	
MRUK, BRIAN P	
ART UNIT	**PAPER NUMBER**
1751	

DATE MAILED: 01/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/814,880	SHILOACH ET AL.	
	Examiner	Art Unit	
	Brian P. Mruk	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 July 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ⇒. 1) 7/21/05 3) 3/3/05 5) 3/31/04 9) 3/7/05 4) 8/23/04
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 21 is objected to because of the following informalities: In instant claim 21, the term "polymers" appears twice in the Markush listing (see lines 2 and 6 of instant claim 21). One occurrence of the term "polymers" should be deleted from instant claim 21. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 27 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 27 contains the trademarks/trade names "Merquat 100 or 2200", "Jaguar C17 or C13S", "Salcare Supre 7, SC10 or SC30", "Gafquat HS100 or 755", and "Luviquat FC370, FC550, HM552 or FC905". Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material

or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademarks/trade names are used to identify/describe products and, accordingly, the identifications/descriptions are indefinite.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 1-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Hitchen, EP 463,780.

Hitchen, EP 463,780, discloses an aqueous shampoo composition comprising 2-40% by weight of surfactants, such as anionic and amphoteric surfactants (see page 2, line 43-page 3, line 13), 0.01-10% by weight of a silicone (see page 3, lines 15-42), 0.1-5% by weight of a suspending polymer, such as an acrylic acid polymer (see page 3, line 44-page 4, line 1), 0.01-5% by weight of a titanium dioxide coated mica having a particle size of 2-150 micrometers (see page 4, lines 4-35), 0.01-5% by weight of a cationic conditioning agent, such as Merquat 100 (see page 4, line 36-page 5, line 9), and additional ingredients, such as pearlescers and additional thickeners (see page 5, lines 10-31), per the requirements of the instant invention. Specifically, note Examples 1-11. The examiner asserts that the compositions disclosed in Hitchen, EP 463,780, would inherently meet the optical property, reflectivity change, opacity change, particle size, and viscosity requirements of the instant invention, since the compositions disclosed in Hitchen, EP 463,780, contain all of the components in the amounts required in the instant claims, absent a showing otherwise. Therefore, instant claims 1-29 are anticipated by Hitchen, EP 463,780.

7. Claims 1-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Shana'a et al, U.S. Patent No. 6,737,394.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Shana'a et al, U.S. Patent No. 6,737,394, discloses an aqueous isotropic cleansing composition for cleaning the human body (see abstract and col. 1, lines 7-10) comprising surfactants, such as anionic and amphoteric surfactants (see col. 2, lines 7-10) a thickening agent, such as hydrophobically modified, crosslinked polyacrylates (see col. 9, line 44-col. 10, line 21), 0.1-25% by weight of organogel particle (see col. 4, lines 13-21), and additional components, such as emollients, structurants, and cationic conditioning agents (see col. 4, line 31-col. 10, line 67), per the requirements of the instant invention. It is further taught by Shana'a et al that the viscosity of the isotropic liquid is 1,000-300,000 cps@ 1/sec shear rate at 25 degrees Celsius (see col. 2, lines 52-57). Specifically, note the Examples in Table 2. The examiner asserts that the compositions disclosed in Shana'a et al would inherently meet the optical property, reflectivity change, opacity change, and particle size requirements of the instant invention, since the compositions disclosed Shana'a et al contain all of the components in the amounts required in the instant claims, absent a showing otherwise.

Therefore, instant claims 1-29 are anticipated by Shana'a et al, U.S. Patent No. 6,737,394.

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1-29 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-28 of U.S. Patent No. 6,906,015. Although the conflicting claims are not identical, they are not patentably distinct from each other because U.S. Patent No. 6,906,015 claims a similar ordered liquid cleansing composition for hair and skin comprising 3-30% by weight of a surfactant system, 0.1-15% by weight of a structurant, 0.1-10% by weight of a cationic polymer, a solid particulate optical modifier, and adjunct ingredients, wherein the composition has a

viscosity of 40,000-300,000 cps at 25 degrees Celsius and meets a specific set of optical properties on the skin (see claims 1-28 of U.S. Patent No. 6,906,015), per the requirements of instant claims. Therefore, instant claims 1-29 are an obvious formulation in view of claims 1-28 of U.S. Patent No. 6,906,015.

10. Claims 1-29 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-28 of copending Application No. 11/071,014. Although the conflicting claims are not identical, they are not patentably distinct from each other because copending Application No. 11/071,014 claims a similar ordered liquid cleansing composition for hair and skin comprising 3-30% by weight of a surfactant system, 0.1-15% by weight of a structurant, 0.1-10% by weight of a cationic polymer, a solid particulate optical modifier, and adjunct ingredients, wherein the composition has a viscosity of 40,000-300,000 cps at 25 degrees Celsius and meets a specific set of optical properties on the skin (see claims 1-28 of copending Application No. 11/071,014), per the requirements of instant claims. Therefore, instant claims 1-29 are an obvious formulation in view of claims 1-28 of copending Application No. 11/071,014.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

11. The examiner notes that the references cited in the International Search Report as "X" references are cumulative to the art rejections of record, and thus, have not been applied in this Office action in accordance with **MPEP 706.02.**

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Mon-Thurs (7:00AM-5:30PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BPM
Brian P Mruk
December 29, 2005

Brian P. Mruk
Brian P Mruk
Primary Examiner
Art Unit 1751